I INTRODUCTION

[1] The Applicant applies for review of a decision of the Registration Committee terminating the Applicant’s provisional registration and licensure effective October 27, 2017, presently subject to a stay order, having failed an academic requirement for registration of obtaining his licentiate from the Medical Council of Canada within a prescribed time period after failing the Part 1 examination ten times.

II BACKGROUND

[2] On July 30, 2009, the Deputy Registrar advised the Applicant, a foreign trained emergency medicine specialist, subject to satisfying certain conditions, the Registration Committee was prepared to grant a one year registration in the Provisional-General/Family Practice class for the practice of family medicine restricted to an underserviced area of need in the province.
Subsequent extension of the licensure was dependent on, amongst other things, becoming a Licentiate ("LMCC") of the Medical Council of Canada ("MCC") within three years of commencement of practice in the province.

A further condition of subsequent extension of the licensure was obtaining certification with the College of Family Physicians of Canada ("CFPC") within five years of commencing practice in the province.

On April 1, 2011, the Applicant was issued a Certificate of Licensure Provisional Class for the practice of medicine restricted to a northern community and surrounding area under sponsorship of a northern health authority and supervision by a physician valid from April 1, 2011, to March 31, 2012.

The Applicant received extensions of his provisional licensure from time to time.

Around April 10, 2013, a news reporter writing a story for the local newspaper requested an interview of an associate dean at the university faculty of medicine regarding the Applicant. The associate dean communicated with the Deputy Registrar leading to a review of the Applicant’s file. The gist of the story was that the Applicant was frustrated at his inability to complete his training.

The Deputy Registrar explained on April 11, 2013, by email to the associate dean to be interviewed by the northern community newspaper reporter that the Applicant was deficient in his foreign fellowship award, and therefore did not satisfy the College’s requirements for completion of all elements necessary of specialty training as an emergency physician in the province. In the Deputy Registrar’s view the Applicant needed to successfully pass the specialty examinations in emergency medicine provided through the Royal College of Physicians and Surgeons of Canada ("RCPSC").

By letter dated April 25, 2013, the Deputy Registrar wrote the Applicant and advised him he did not hold status as an emergency specialist recognized by the College as he was absent his fellowship examinations. The letter asked whether the Applicant had sat the MCC Qualifying Examinations ("MCCQE") Parts I and II which the Applicant was required to complete by April 2014. The letter asked the Applicant to clarify what level of emergency physician work he was in fact doing in the clinic and at the hospital. The letter enclosed the relevant bylaws and asked for a prompt reply regarding the possible inconsistencies in the Applicant’s scope of clinical practice and registration status.

The Applicant wrote the Deputy Registrar by letter dated May 26, 2013, advising he waited results of taking the MCCQE I on April 30, 2013. The Applicant stated he understood he was registered as a general family physician and that a consultant told him, as such, he could work in the emergency department as a family physician. The Applicant explained his current scope of practice involved between 96 and 128 hours per month in the hospital emergency department and his plan to complete a fifth year of training in a RCPSC approved emergency program in order to be allowed to sit the specialty examination.
The Deputy Registrar wrote the Applicant by letter dated June 3, 2013, and was satisfied with the Applicant’s May 26 letter content and cooperation with the College’s registration process.

By letter dated June 25, 2013, the Applicant’s supervisor reported to the Deputy Registrar that the supervisor had only received positive feedback concerning the Applicant from medical, nursing and administrative staff and no issues existed regarding professionalism or ethics. The supervisor stated the Applicant required little involvement by the supervisor.

By letter dated October 7, 2013, the northern health authority released the Applicant to pursue additional emergency room fellowship training at a hospital on Vancouver Island as they needed extra help in their emergency room.

By email dated December 16, 2013, the Applicant advised the College he did not pass his MCCQE I exam and he would write it again in April 2014. The Applicant applied for an extension of time to fulfil the requirement. On January 7, 2014, the College advised the Applicant he needed to fulfil the requirement by the end of 2014 or his file would be presented to the Registration Committee for review for consideration of extension of his licensure.

On March 26, 2014, the College sought the supervisor’s evaluation report. By letter dated May 12, 2014, the supervisor in the northern health region provided the Deputy Registrar with a glowing report of the Applicant’s work and professionalism as an emergency room physician family practitioner and outreach physician. The supervisor stated:

I have no hesitation in recommending (the Applicant) acceptance (sic) as a professional Colleague in our midst and he provides a valuable and useful service and is required.

As of May 2014 the Applicant held provisional licensure to practice medicine with conditions and supervision in restricted areas in the north of the province and Vancouver Island to June 30, 2014. The Applicant also held a provisional licence to practice medicine in the north of the province with conditions and supervision until February 28, 2015, according to the record of registration and licensure provided by the College (the “Record”).

Around July 18, 2014, the Applicant sent the College a large volume of material outlining a training plan. The Deputy Registrar prepared a detailed five page memo which discussed two significant and urgent issues. The two issues were the College’s requirement for RCPSC confirmation the Applicant had been accepted into an independent learner post graduate training program of twelve months duration with an approved program director and given the Applicant’s ongoing failure to date to pass the MCCQE I examination his file would be presented to the Registration Committee on August 28, 2014, which latter fact the Applicant was advised of.

The Applicant provided a letter dated August 11, 2014, to the Deputy Registrar for the Registration Committee’s consideration explaining his difficulties encountered in
attempting to secure a residency program at various academic institutions, lack of
resources to pursue a fellowship and his opportunity for a supervised year of training as
an independent learner, granted by the RCPSC.

[19] The Registration Committee provided the Applicant with its decision by letter
dated September 5, 2014 (the “September Decision”). The September Decision
extended the Applicant’s provisional registration and licensure to February 28, 2015,
subject to confirmed approval of a program director and supervisor of the independent
learner post graduate training experience and successful completion of the MCCQE I or
that the Applicant was registered to sit each and every available sitting of the
examination while the Applicant remained a registrant of the College.

[20] The Applicant received a provisional certificate of licensure for the period
October 15, 2014, to February 28, 2015, to practice medicine in restricted areas in the
north and for emergency medicine training at two hospitals.

[21] The Applicant failed to pass his 2014 Fall sitting of the MCCQE I; therefore, he
registered for the 2015 Spring sitting which he failed. The Applicant sat and failed the
Fall 2015 exam, and this was his eighth attempt.

[22] The Applicant completed a rotation from February 6 to March 6, 2015, in a
hospital pediatric intensive care unit. The supervisor’s report of April 19, 2015, to the
Deputy Registrar indicated the Applicant was functioning at the same level as a R2
pediatric junior resident, competent in his basic medical practice and a little out of his
depth in the unfamiliar ICU environment requiring some direction.

[23] On February 24, 2016, the College issued the Applicant a provisional certificate
of licensure to practice medicine restricted to certain northern communities and training
in emergency medicine at a hospital to February 28, 2017.

[24] The Applicant enrolled to write the RCPSC Spring 2016 written examination in
emergency medicine. In the circumstances of the dates being in close proximity the
Applicant advised the College on April 12, 2016, he was withdrawing from writing the
Spring 2016 MCCQE I.

[25] The Applicant was informed by the College on April 14, 2016, in light of failing his
eighth attempt to pass the MCCQE I and withdrawal from sitting the next examination,
that his file would be reviewed by the Registration Committee on May 24, 2016.

[26] By email dated April 14, 2016, the Applicant provided further information for the
Registration Committee to consider including:

(a) poor preparation;
(b) divorce and other personal losses;
(c) his struggle of obtaining additional emergency medicine training; and
(d) the intention to sit the Fall 2016 MCCQE I.
The Registration Committee provided its decision to the Applicant by letter dated June 3, 2016 (the “June Decision”). In the June Decision the Registration Committee advised the Applicant that his registration and licensure would be continued to permit him to sit the Fall 2016 MCCQE I. The Applicant was warned that if he did not provide the results of his MCCQE I examination by December 31, 2016, his registration and licensure would be cancelled, subject to extension in extenuating circumstances. The Registration Committee further stated if the Applicant failed the Fall 2016 MCCQE I examination his registration and licensure would be cancelled effective March 31, 2017, allowing three months to wind up his practice. Continued licensure was subject to further conditions.

The Applicant enrolled to sit the Fall 2016 MCCQE I. I note the examination fee was $1,005.

By letter dated June 15, 2016, the RCPSC advised the Applicant he had failed the examination leading to certification in emergency medicine.

On April 11, 2017, the Applicant advised the College he was sitting an oral examination with the RCPSC on May 5, 2017, and his next writing of the MCCQE I was set for May 10, 2017. The Applicant advised he had sat the RCPSC’s written examination on March 21 and 22, 2017, with no results yet.

By letter dated April 12, 2017, the Applicant’s current northern community supervisor wrote the College stating the Applicant was a very competent and skilled emergency physician and that three close relatives of the Applicant had passed away in January, March and August, 2016. The supervisor asked the Applicant be given an opportunity to complete his RCPSC exams.

By letter dated May 9, 2017, the Registration Committee informed the Applicant it had agreed to continue the Applicant’s registration and licensure to complete the May 5, 2017 RCPSC certification examination and May 10, 2017 MCCQE I examination until the Applicant’s results were known. The Registration Committee noted that, as the Applicant could not obtain his LMCC as required by June 30, 2017, his licensure was to be cancelled three months after receipt of the RCPSC results. The Registration Committee noted that should new information come to light to warrant a further extension of the Applicant’s registration, it would then be prepared to further review the Applicant’s ongoing registration (the “May Decision”).

On June 6, 2017, the Applicant advised he was not successful in the RCPSC certification examination with the MCCQE I results pending.

The Applicant filed this application for review of the May Decision on June 9, 2017.

It is noted that in the May Decision the Registration Committee stated it did not find the information provided by the Applicant’s supervisor to be “extenuating.” On June 19, 2017 the Supervisor wrote the Review Board reiterating what the supervisor argued
were, in his view, extenuating circumstances and that the Applicant had provided excellent service in the emergency department.

[36] By letter dated June 23, 2017, the College informed the Applicant he was unsuccessful in sitting the Spring 2017 MCCQE I which he had now sat ten times. The College advised the Registration Committee would consider his file and sought information from the Applicant.

[37] The Applicant wrote the College on June 24, 2017, expressing some confusion and explaining he was registered for the Spring 2018 RCPSC certification examination and could not register yet for the Fall 2017 MCCQE I examination.

[38] The Registration Committee met on July 27, 2017, and the Applicant was informally advised on August 14, 2017, that his registration and licensure would lapse on October 26, 2017. A formal decision letter followed dated August 15, 2017, to the same effects due to the Applicant not obtaining his LMCC certification by June 30, 2017 (the “Reconsideration Decision”).

[39] The Applicant was invited by the Review Board to submit a Statement of Points by September 21, 2017. The Applicant advised the Review Board he would be relying on the content of his application for review.

[40] The College provided its statement of points on October 6, 2017, and the Applicant did not reply having been given by the review board until October 10, 2017, to do so.

III DISCUSSION AND ANALYSIS

[41] Section 20(1) of the Health Professions Act, R.S.B.C. 1996, c. 183, (the “Act”) provides that the Registration Committee is responsible for granting registration of a person as a member of the College.

[42] Sections 20(4.3) and (4.4) of the Act specifically address provisional registrants. Section 20(4.3) states:

20(4.3) If a bylaw under section 19 (1) (i) establishes a class of provisional registrants for the purpose of this subsection, the registration committee may

(a) grant registration in the class for a limited period specified for the registrant by the registration committee,

(b) require the registrant to complete, within the period specified under paragraph (a), any examinations or upgrading of knowledge, skills or abilities the registration committee considers necessary for the registrant, and

(c) impose limits or conditions on the practice of the designated health profession by the registrant.
20(4.4) Limits or conditions imposed in accordance with subsection (2.1), (3), (4.2) or (4.3) may be different for different registrants within a class of registrants.

[43] Section 19(1) of the Act empowers the College to make bylaws, including bylaws that establish conditions or requirements for the registration of a person based on standards of academic or technical achievement.

[44] The Applicant was advised in writing by the College by letter dated July 30, 2009, that within three years of commencing practice in the province he needed to obtain his LMCC. To achieve this bylaw requirement the Applicant needed to pass the MCCQE I as the first hurdle. The Applicant tried ten times to cross this hurdle but, with extensions granted, was unsuccessful.

[45] College bylaw 2-14 states, in part, a registrant granted provisional registration must, if a general/family practitioner, become a licentiate of the MCC within three years of commencement of practice in the province. If a specialist, the registrant must become a licentiate of the MCC within five years of commencing practice, subject to s.2-21. This time period may be extended by the Registration Committee in exceptional circumstances.

[46] The Applicant’s registration and licensure commenced April 2011. In February, 2016 the Applicant was transferred to the provisional specialty class of registration.

[47] I agree with the submission of the College that the Applicant failed to comply with the requirements for ongoing licensure, namely, completion of obtaining his LMCC by June 30, 2017, as set out in the May Decision.

[48] It is true that the Applicant has experienced challenges during his efforts to pass the MCCQE I but, he has been given many extensions and ten opportunities to pass that examination.

[49] The remedial authority given to the Review Board under s.50.54(a) of the Act is to confirm the decision, direct the Registration Committee make a decision that could have been made or send the matter back for reconsideration.

[50] In light of the Applicant’s repeated failures, with many extensions and warnings, to pass the MCCQE I after ten attempts and to obtain his LMCC by June 30, 2017, I cannot say that the Registration Committee has acted unfairly, made its decision in bad faith, for an improper purpose, based on irrelevant factors or failed to comply with requirements of the Act. Therefore, I cannot direct the Registration Committee to grant registration to the Applicant as the grounds for such decision under s.50.54(10) of the Act are not met.

[51] The enforcement of requirements for ongoing registration is within the jurisdiction and legislative authority of the College, and therefore, the Registration Committee had the authority to make the decision it made. The Applicant was fully aware he needed to obtain his LMCC by June 30, 2017, and was afforded the opportunity to make
submissions to the Registration Committee. The May Decision was transparent, intelligible and justified taking into account the facts and law.

[52] There was evidence in the Record of exceptional circumstances faced by the Applicant at points in time but, these circumstances, in my view, do not explain failing the MCCQE I ten times over several years, and therefore, could be properly viewed as not being exceptional by the Registration Committee examined in this broader context.

[53] Given the many glowing reports about the Applicant’s work as an emergency physician in a northern community of the province it is unfortunate that his medical services and commitment as a physician to the northern community are lost due to failing an examination.

[54] It is not my role to engage in a de novo assessment substituting my judgment for that of the Registration Committee. I must give considerable weight and respect to the rationally expressed views and conclusions of the Registration Committee.

[55] The Applicant has asked me to maintain his registration with the College for as long as the RCPSC allow him “access” to write their examination. In asking me to do so I would be substituting my judgment for that of the Registration Committee. I cannot say that the Registration Committee’s June 30, 2017, deadline for the Applicant achieving his LMCC is a clearly flawed or unintelligible decision in all the circumstances of failing to pass the MCCQE I ten times with many extensions and warnings provided along the way. The May Decision was transparent, intelligible and justifiable, or in other words, within the range of reasonableness. The Reconsideration Decision merely affirmed the result.

IV Conclusion

[56] For all the above reasons the May Decision of the Registration Committee and its Reconsideration Decision affirming the May Decision on July 27, 2017 are hereby confirmed.

“David A. Hobbs”

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David A. Hobbs, Panel Chair
Health Professions Review Board